4143

SUPREME COURT OF THE UNITED STATES.

No. 132.

ALANSON SALTMARSH, PLAINTIFF IN ERROR,

vs.

JAMES W. TUTHILL.

IN ERROR TO THE DISTRICT COURT, U. S., FOR MIDDLE DISTRICT OF ALABAMA.

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Gideon, print.

UNITED STATES OF AMERICA,
Middle district of Alabama.

At a district court of the United States, for the middle district of Alabama, begun and held at Montgomery on the first Monday after the fourth Monday of November, A. D. 1849.

Present, the honorable John Gayle, judge of said court.

Writ.

UNITED STATES OF AMERICA,

District court of the United States, for the middle district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of Alanson Saltmarsh, who is a citizen of the State of Alabama, and him safely keep so that you have him before the honorable the judge of the said court at the place of holding said court at Montgomery, on the first Monday after the fourth Monday of November, instant, to answer to James W. Tuthill, who is a citizen of the State of Louisiana, in a plea of trespass on the case upon promises, to the plaintiff's damage ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable William Crawford, judge of the said court, this fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-eight. [L. S.]

Issued the 13th day of November, in the year of our Lord one thousand eight hundred and forty-eight.

Attest: A. G. GOOCHE,
Clerk, district court, middle district of Alabama.

Cause of action—endorsement.

This action is brought against defendant as endorser of a bill of exchange drawn by Samuel M. Hill, dated Mobile, 13 December, 1845, due thirty days after date, payable to the order of A. W. Coleman, esq., for four thousand dollars, negotiable and payable at the bank of Mobile, for value received, directed to and accepted by Messrs. Wm. Bower & Co., and endorsed by A. W. Coleman and said defendant.

PRYOR & WHATLEY,
Plaintiff's attorneys.

Marshal's return.

Received in office 14 November, 1848.

J. G. LYON, *U. S. M.*,
By H. WILKINS, *D. M.*

Executed 1st December, 1848.

J. G. LYON, *U. S. M.*,
By H. WILKINS, *D. M.*

Declaration.

UNITED STATES OF AMERICA, *ss:*

District court of the United States, for the middle district of Alabama, December term, A. D. 1848.

James W. Tuthill, who is a citizen of the State of Louisiana, by attorney, complains of Alanson Saltmarsh, in custody, &c., who is a citizen of the State of Alabama, in a plea of trespass on the case, &c.; for that whereas one Samuel M. Hill, heretofore, to wit, on the thirteenth day of December, in the year of our Lord one thousand eight hundred and forty-five, at Mobile, to wit, in the district aforesaid, made his certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there requested one William Bower and company, thirty days after the date thereof, to pay to the order of one A. W. Coleman, esq., the sum of four thousand dollars, for value received, negotiable and payable at the bank of Mobile, and then and there delivered the said bill of exchange to the said A. W. Coleman, which said bill of exchange the said William Bower and company afterwards, to wit, on the day and year aforesaid, upon sight thereof, accepted, and the said A. W. Coleman, to whose order the said sum of money in the said bill of exchange specified was to be paid after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at, to wit, in the district aforesaid, endorsed the said bill of exchange, by which said endorsement he, the said A. W. Coleman, then and there ordered and appointed the said sum of money in the said bill of exchange specified to be paid to the said defendant; and the said defendant, to whose order the payment of the said sum of money in the said bill of exchange specified was to be made, after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year last aforesaid, at to wit, in the district aforesaid, endorsed the said bill of exchange, by which said last endorsement he, the said defendant, then and there ordered and appointed the said sum of money in the said bill of exchange specified, to be paid to the said plaintiff, and then and there delivered the said bill of exchange, so endorsed as last aforesaid, to the said plaintiff; and the said plaintiff avers, that afterwards, and when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, at the said bank of Mobile aforesaid, that is to say, at to wit, in the district aforesaid, the said bill of exchange was duly presented, and shown for payment thereof, and payment of the said sum of money in said bill of exchange specified was then and there duly required; but that neither the said Bank of Mobile nor the said William Bower and company, nor the said defendant, or any person or persons on behalf of the said William Bower and company, or of said defendant, did or would, when

the said bill of exchange was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, at to wit, in the district aforesaid, had notice. By means whereof, and by force of the statute in such case made and provided, he, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at to wit, in the district aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested. Yet the said defendant, although often requested so to do, has not as yet paid the said plaintiff the said sum of money in the said bill of exchange specified, or any part thereof, but has hitherto wholly failed and neglected so to do, and still doth neglect and refuse so to do, to the damage of the said plaintiff ten thousand dollars. Wherefore he sues, &c.

PRYOR & WHATLEY,
Plffs' Atty.

Filed in office, 6th December, 1848.
Teste: A. G. GOOCH, *Clerk, &c.*

Defendant's plea to jurisdiction.

UNITED STATES OF AMERICA,
District court of the United States,
for the middle district of Alabama.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH. } December term, 1848.

And the said defendant, in his own proper person, comes and says, that this court ought not to have or take cognizance of the action aforesaid, because, he says, that the said supposed causes of action, and each and every of them, (if any such have accrued to said plaintiff,) accrued to said plaintiff out of the jurisdiction of this court; that is to say, that said bill of exchange was drawn by Samuel M. Hill, endorsed by Allen W. Coleman and said defendant, and accepted by the said William Bower, as stated in plaintiff's declaration; and the said William Bower & Co., (being a firm composed of William Bower and one George Haig,) who then were, and now are, citizens of the State of Alabama aforesaid, before said bill of exchange became due, according to its tenor and effect, assigned the same to said plaintiff; and that all the title which now vests, or ever has vested, in said plaintiff to said

bill of exchange, was acquired from the said William Bower & Co. as aforesaid, and this the said defendant is ready to verify; wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

A. SALTMARSH.

Verification of plea.

District court of the United States, for the middle district of Alabama.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH. } December term, 1848.

Alanson Saltmarsh, the defendant in this case, maketh oath and saith, that the plea hereunto annexed and immediately foregoing is true in substance and in fact, to the best of his knowledge, information, and belief.

A. SALTMARSH.

Sworn to before me, this 6th day of December, 1848.

A. G. GOOCH,
Clerk, D. C., mid. dist. of Ala.

Filed in clerk's office, 6th day of December, 1848.
Teste: A. G. GOOCH, *Clerk, &c.*

Plaintiff's demurrer to plea to the jurisdiction.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH.

U. S. district court at Montgomery.

General demurrer to defendant's plea to the jurisdiction; December term, A. D. 1848.

And the said plaintiff says that the said plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the said writ; and that he, the said plaintiff, is not bound by the law of the land to answer the same; and this he is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said defendant may answer further to the said declaration, &c.

PRYOR & WHATLEY,
Plaintiff's attorneys.

Order from minutes.

And at the May term, A. D. 1849, an entry was made in the words and figures following, to wit:

JAMES W. TUTHILL
vs. } 749.
ALANSON SALTMARSH.

This day came the parties, by their attorneys, and, on motion of defendant, it is ordered that this suit be continued.

Defendant's pleas.

UNITED STATES OF AMERICA,
Middle district of Alabama.

District court, December term, 1849.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH.

And the said defendant, pleading in short by consent, pleads—

1. Non-assumpsit.

2. That the bill of exchange sued upon in this action was made for the accommodation of William Bower & Co., the acceptors; and that said plaintiff purchased the same of the said William Bower & Co. at a discount of more than eight per cent. per annum; and this the said defendant is ready to verify, &c.

3. That he endorsed the bill sued on in this action on the "Christian Sabbath, or first day of the week, commonly called Sunday," and on the same day delivered it to William Bower, one of the acceptors thereof, for the accommodation of the firm of Wm. Bower & Co., which said firm of Wm. Bower & Co. afterwards negotiated the same to the plaintiff at an usurious rate of interest; of which said firm the said Wm. Bower was then a member; and this the said defendant is ready to verify, &c.

GAYLE & BAGBY,
Ptr defendant.

Plaintiff's demurrer to defendant's second plea.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH.

District court of the United States, Montgomery, December term, 1849.

And the said plaintiff says that the said second plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant; and that he, the said plaintiff, is not bound by law to answer the same; and this he, the said plaintiff, is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judg-

ment and his damages, by reason of the non-performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

PRYOR & WHATLEY,
Attorneys for plaintiffs.

Bill of exceptions.

UNITED STATES OF AMERICA,
Middle district of Alabama.

December term, 1849.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH.

Be it remembered, that on the trial of this cause, after the plaintiff had made out a prima facie case, the defendant introduced the evidence of George A. Tuthill, which is in the words and figures following, to wit:

Direct interrogatories to Tuthill.

Interrogatory 1st. To George A. Tuthill: Unless the original bill of exchange sued upon in this action is produced at your examination for your inspection, then look upon exhibit A, hereto attached, which is a copy of it, and say whether you ever saw the original before, and when, and in whose hands; to whom does said bill belong? If you answer, to the plaintiff, then state from whom he obtained it, when, upon what consideration, and whether it came to his possession by purchase, in extension, or payment of a pre-existing debt, or as collateral to a debt due him by William Bower, or William Bower & Co.

Interrogatory 2d. At the time said bill first went into plaintiff's possession, or into yours, as his agent, how much was Wm. Bower & Co. indebted to plaintiff; how long had they been indebted, and to what amount, and how often; when and in what way was the said indebtedness varied, changed, extended, or renewed?

Interrogatory 3d. Will you please state all you know in relation to plaintiff's ownership of said bill, it being the same heretofore sued upon in the circuit court of Dallas county, Alabama?

Exhibit A—*Exhibit A.*

$4,000. MOBILE, 13*th December*, 1845.

Thirty days after date, pay to the order of A. W. Coleman, esq., four thousand dollars, value received, negotiable and payable at the Bank of Mobile, and charge the same to account.

Your obedient serv't,

SAMUEL M. HILL.

To Messrs. WM. BOWER & Co.,
Mobile.

Written across the face "Wm. Bower & Co." Endorsed "A. W. Coleman," "A. Saltmarsh," "James W. Tuthill."

Cross interrogatories to Tuthill.

Cross interrogatories to be propounded to George A. Tuthill, a witness to be examined on the part of defendant in a certain cause pending in the district court of the United States, for the middle district of Alabama:

In your answers to the interrogatories propounded by the defendant, you will state nothing from hearsay or report, but state facts which you know of your own knowledge only.

Cross interrogatory 1. State whether or no William Bower and George Haig were partners, by the name of William Bower & Co., in the city of Mobile in the year 1845?

Tuthill's answer to

Direct interrogatory 1st. I have seen the original bill of exchange, of which exhibit A, hereto attached, is said to be a copy; saw it in the hands of plaintiff, who obtained it of William Bower, in December, 1845; said bill is the property of plaintiff, and was taken in extension of a pre-existing debt for precisely the same amount due by the same parties.

Direct interrogatory 2d. At the time plaintiff received the bill referred to he was the holder of two bills of exchange, viz., one for four thousand dollars, dated May 10th, 1845, and payable seven months after date, drawn by S. M. Hill, accepted by William Bower or William Bower & Co., and endorsed A. W. Coleman and A. Saltmarsh; and one for five thousand dollars, dated May 20th, 1845, and payable seven months after date, drawn by S. M. Hill, accepted William Bower or William Bower & Co., and endorsed by Perine & Crocheron and A. W. Coleman. These two bills were purchased by James W. Tuthill with money, and the original bill (of which exhibit A, hereto attached, is said to be a copy) was received in extension of the bill first described in this answer.

There was no other extension of this bill, to wit, the bill here sued on.

Direct interrogatory 3d. During the spring of 1845, plaintiff arranged with William Bower to purchase the two bills first described in my answer to the second interrogatory. Previous to doing so he left for New York, and desired me, as his agent, to receive said bill from William Bower, or William Bower & Co., and pay for them the sum of eight thousand dollars, which was done by me on the 29th May, 1845.

GEORGE A. TUTHILL.

Tuthill's answer to

Cross interrogatory 1st. To the best of my knowledge and belief,

William Bower and George Haig were partners in business in the year 1845. GEORGE A. TUTHILL.

The defendant next offered the depositions of William Bower, one of the acceptors of the bill sued on, which is in the words and figures following, to wit:

Direct interrogatories to William Bower.

Direct interrogatory 1st to William Bower. Unless the original bill sued on in this action is produced on your examination, look upon exhibit (A) hereto attached, which is a copy thereof, (said bill being the same heretofore sued on in the circuit court of Dallas county, Alabama,) and state fully how, in what way, and upon what consideration said bill sued on came to the possession of the plaintiff; state the various transactions fully between plaintiff, or George A. Tuthill as his agent, and William Bower & Co., through or by the means of which the plaintiff became proprietor; how much was deducted from the face of the bill when taken by plaintiff, and how much from other debts, out of which the transaction grew; state fully all you know about it, tending to show that plaintiff is an usurious holder, and the extent of his usury?

Direct interrogatory 2d. Were you present when the defendant Saltmarsh endorsed said bill of exchange; if yea, where did he endorse it, and on what day of the week did he endorse it; and at whose request or solicitation? Answer fully.

Direct interrog'y 3d. In what character did you hold said bill; for whose accommodation was it made; who assigned it to plaintiff; did plaintiff know its character?

Direct interrog'y 4th. State all you know that will benefit the defendant, and all the circumstances under and by which plaintiff obtained said bill.

Cross interrogatory to Bower.

Cross interrogatories to be propounded to William Bower, a witness to be examined on the part of the defendant, in a certain cause pending in the district court of the United States, for the middle district of Alabama. The plaintiff objects to the examination of said Bower, because he is one of the acceptors of the bill sued on in this action, and therefore an incompetent witness, and on the trial of the cause he will object to the reading of such answers as the said witness may make to the interrogatories propounded to him. The plaintiff, not waiving his objections to the competency of said Bower, propounds cross interrogatories to him, the answers to which are to be read upon the trial, should the court hold the said witness to be competent.

Cross interrog'y to Bower.

1st. If you say Saltmarsh endorsed said bill on Sunday, then state

whether or no the plaintiff received said bill on Sunday, or on any other, and what other, day. Did you tell plaintiff said bill was endorsed on Sunday? Did not defendant endorse said bill and deliver it to you for the purpose of renewing another bill which the plaintiff held, endorsed by defendant? Did you not tell defendant, at the time he endorsed the bill sued on, that it was to be delivered to plaintiff to renew another bill, or in substitution or payment of another bill held by plaintiff?

Cross interrogatory 2d. Were you and George Haig partners, by the name of William Bower & Co., in 1845?

Answer of Wm. Bower to direct interr'y 1. In order to answer this interrogatory fully and satisfactorily, I deem it necessary to recur to the original transaction, which led to the endorsements of defendant on the bill of exchange mentioned in exhibit (A) hereto annexed.

Finding, at the close of the business of 1845, that W. Bower & Co. would be short of means to close their business satisfactorily, I applied to my friends, (whose names appear on the bill in question,) and on the representation of my situation, (or rather that of Wm. Bower & Co.,) obtained their names on this bill for $4,000, with the endorsement of defendant, together with the bill of exchange, one for $5,000, endorsed by Perine & Crocheron.

These two bills of $4,000, (the one in question,) and of $5,000, (endorsed by Perine & Crocheron,) I negotiated with James W. Tuthill, through his agent, George A. Tuthill, and to the best of my recollection received in cash for the two bills, amounting to nine thousand dollars, the sum of eight thousand dollars, with the understanding previously made with Tuthill, that at the maturity and payment of the bills he would refund to me anything over the usual commissions for advancing, (which was 5 per cent.,) and the legal interest, nothing more being required by him for the use of the money. A short time prior to the maturity of these bills, finding that it would be impossible for me to meet them, it being early in the business season, and knowing that my failure to do so would involve him in my business, and thereby greatly injure my friends, I applied again to the same parties, and requested them to furnish me with new bills, for the purpose of renewing, and taking up the old ones; they consented to do so, and gave me their names on new bills, in blank, (as to date and amount, at my request,) as I could not know, at the time, how much the holders of the bills would require in renewal, or the length of time they would allow them to run. The bill in question for $4,000, mentioned in exhibit (A) of this paper, is one of these bills, which was signed by defendant, in my presence, at the store of Messrs. Perine & Crocheron, in Cahawba, on Sunday, it being the only opportunity I had of seeing defendant, my business requiring me to go in all haste to Mobile.

After my arrival in Mobile, I called on J. W. Tuthill, and on representing to him my inability to pay the bill in question at maturity, he consented to renew the same, for same amount of the old one,

say $4,000, (I think,) at 60 days, by my paying the interest. I accordingly gave him the new bill for $4,000, and took up the old one, which was subsequently handed to Dr. Saltmarsh, the defendant.

Direct interrogatory 2d. He says, I have fully answered this interrogatory in my answer made to first interrogatory, and refer to same.

Direct interrogatory 3d. In answer to this interrogatory I will state, that I received the bill in question from defendant for the purposes set forth in my answer to the first interrogatory, and held the same by consent of defendant. I assigned it to plaintiff, who knew that it was for the accommodation of Wm. Bower & Co.

WM. BOWER.

Answer of Wm. Bower to cross interrogatory 1. He says: The plaintiff did not receive the bill on Sunday, but on a week day; I do not remember on what day of the week; I did not tell plaintiff that said bill was endorsed on Sunday, because I did not think of it at the time, nor did I think it important, as the endorsement of defendant was obtained on that day from necessity, it being the only opportunity I had of seeing him on my way to Mobile. The defendant did endorse said bill and deliver the same to me, for the purpose of renewing another bill, (the same mentioned in my answer to first interrogatory of defendant.) I fully informed defendant of the object of said bill, which was to renew the bill for $4,000 held by plaintiff, as mentioned in my answer to first direct interrogatory.

Cross interrogatory 2. He says: George Haig and witness were partners in 1845, by name of Wm. Bower & Co.

WM. BOWER.

The plaintiff objected to the introduction of the evidence, on the ground of the incompetency of the witness as a party to the paper sued on, and the court sustained the objection and ruled out the evidence, and the defendant excepted. The defendant offered to prove by Samuel M. Hill, the drawer of the bill sued on, that the bill was made and endorsed for the particular purpose of renewing a debt due by Wm. Bower & Co., to the Life Insurance and Trust Company of Mobile, Alabama, and delivered to the acceptors for that purpose. The plaintiff objected to the introduction of this witness for that purpose, and the court sustained the objection and ruled out the witness, and the defendant excepted.

The plaintiff, in making out his proof in the opening of the cause, offered to the jury the notary's protest of the bill sued on, which is in the words and figures following, to wit:

Notary's protest.

"By this public instrument of protest, be it known, that on this fifteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, I, John Rolston, notary public in and for the county

of Mobile, the State of Alabama, duly commissioned and sworn, residing in the city of Mobile, in said county, did receive from T. M. English, cashier of the Bank of Mobile, and holder for said bank, a bill of exchange, being in words and figures as follows, to wit:

$4,000. MOBILE, 13*th December*, 1845.

Thirty days after date, pay to the order of A. W. Coleman, esq., four thousand dollars, value received, negotiable and payable at the Bank of Mobile, and charge the same to account.

Your ob't serv't,

SAM'L M. HILL.

To Messrs. WM. BOWER & Co., Mobile.

Endorsed on the back, "A. W. Coleman, A. Saltmarsh, James W. Tuthill;" of which bill of exchange the said cashier required me, the notary, to demand payment, and in case of refusal, or failing to obtain the same, to make a protest in the premises. Whereupon, at the request aforesaid, I, the said notary, did present the said bill of exchange at the Bank of Mobile, to an officer thereof, and demanded payment, who answered, "no funds."

And whereupon, I, the said notary, did protest, as by these presents I do solemnly and publicly protest, as well against the drawer and endorsers, as against all others whom it may or doth concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered for want of payment of said bill of exchange.

Notices of protest left at the office of the last endorser this day, and put into the post office next morning, addressed to the drawer, first and second endorsers, at Cahawba, Alabama.

Thus done and protested, at Mobile aforesaid, in presence of John Doe and Richard Roe.

In testimony whereof I, the said notary, grant these presents under my signature and seal notarial.

JOHN ROLSTON,
Notary public.

The defendant objected to the introduction of this evidence, but the court overruled the objection, and admitted the evidence, and the defendant excepted.

And now the said defendant prays that this his bill of exceptions may be signed, sealed, and enrolled, which is accordingly done.

JOHN GAYLE, [L. S.]
Judge, &c.

Judgment.

JAMES W. TUTHILL
vs.
ALANSON SALTMARSH. } 749.

This day came the parties, by their attorneys, and the plaintiff de-

murred to the defendant's plea to the jurisdiction of the court; and the said demurrer being argued and considered by the court, the same was sustained.

The defendant thereupon obtained leave of the court to plead over, and thereupon pleaded to the merits; to the second of said defendant's pleas the plaintiff demurred, and his said demurrer being argued and considered by the court, is sustained; and then came a jury, to wit, Nathaniel H. Clanton, foreman, and eleven others, who being elected, tried, and sworn, well and truly to try the issues joined in this case, on their oaths do say, they find for the plaintiff and assess his damages at the sum of five thousand six hundred and forty-eight dollars.

It is therefore considered by the court, that the said plaintiff recover of the said defendant the said sum of five thousand six hundred and forty-eight dollars, so by the jury aforesaid assessed, and the costs in this behalf expended, for which execution may issue.

And the said defendant prays an appeal to the next term of the Supreme Court of the United States, which is accordingly granted upon his executing bond. And the said defendant having executed an appeal bond, with Samuel M. Hill as security, the same is approved by the court.

Appeal bond.

UNITED STATES OF AMERICA.

Know all men that we, Alanson Saltmarsh and Samuel M. Hill are held and firmly bound unto James W. Tuthill in the penal sum of eleven thousand two hundred and ninety-six dollars; for the payment of which we bind ourselves, our and each of our heirs, executors, administrators, and assigns forever. Sealed with our seals, and dated this eighth day of December, A. D. 1849. The condition of the above obligation is such, that whereas the said James W. Tuthill has obtained a judgment against the said Alanson Saltmarsh, on this day in the district court of the United States, for the middle district of Alabama, at Montgomery, in the cause of the said James W. Tuthill against the said Alanson Saltmarsh, from which judgment said court has granted an appeal to the Supreme Court of the United States. Now, if the said Alanson Saltmarsh shall prosecute his said appeal to effect, and pay the said James W. Tuthill all such costs and damages as may be awarded against him by the said Supreme Court of the United States, and shall abide and perform such judgment as may be rendered against him by said Supreme Court, then this obligation to be void, otherwise to remain in full force and effect.

A. SALTMARSH, [L. S.]
SAM'L M. HILL. [L. S.]

And afterwards, to wit, on the 20th of April, A. D. 1850, said defendant, Alanson Saltmarsh, applied for and obtained a writ of error to the Supreme Court of the United States, which is hereto appended.

And afterwards, to wit, on the 23d day of April, A. D. 1850, said defendant, Alanson Saltmarsh, executed and filed in the clerk's office of the district court of the United States, for the middle district of Alabama, a bond commonly called a writ of error bond, which is in the words and figures following, to wit:

Writ of error bond.

UNITED STATES OF AMERICA,
District court of the United States,
for the middle district of Alabama.

Know all men by these presents, that we, Alanson Saltmarsh and Samuel M. Hill, are held and firmly bound unto James W. Tuthill in the just and full sum of eleven thousand two hundred and ninety-six dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 23d day of April, one thousand eight hundred and fifty.

The condition of the above obligation is such, that whereas the above named James W. Tuthill hath obtained a judgment against the said Alanson Saltmarsh, in the district court of the United States, for the middle district of Alabama, for the sum of five thousand six hundred and forty-eight dollars damages, and the further sum of one hundred $\frac{44}{100}$ dollars costs of suit; and the said case having been taken up by the said Alanson Saltmarsh to the next Supreme Court of the United States by writ of error: Now, if the said Alanson Saltmarsh shall prosecute the said writ of error to effect, and shall pay and satisfy the judgment which shall or may be rendered in the said cause by the Supreme Court of the United States of America, then the above obligation to be void; otherwise to remain in full force and virtue.

A. SALTMARSH, [L. S.]
SAML. M. HILL. [L. S.]

In presence of—
MATT. GAYLE, *Clerk.*

The above bond is approved this 30th day of April, 1850.

JOHN GAYLE,
Judge U. S. dist. courts for State of Alabama.

Whereupon, on the 30th day of April, A. D. 1850, was issued by the hon. John Gayle, judge of said court, and on the 11th of May, A. D. 1850, was filed in the clerk's office a citation to said defendant in error, and which is also hereto appended.

I, Matt. Gayle, clerk of the district court of the United States, for the middle district of Alabama, do hereby certify, that the foregoing thirty pages contain a true and correct transcript of the record and proceedings in the case of James W. Tuthill against Alanson Saltmarsh, as they remain of record in this office.

In testimony whereof at office in the city of Montgomery, I have hereunto set my hand and affixed the seal of said court, this [L. S.] 29th day of July, in the year of our Lord one thousand eight hundred and fifty.

MATT. GAYLE,
Clerk mid. dist. of Ala.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the district court of the United States, for the middle district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between James W. Tuthill, plaintiff, and Alanson Saltmarsh, defendant, a manifest error hath happened to the great damage of the said Alanson Saltmarsh, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid; with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme court, this 20th day of April, in the year of our Lord one thousand eight hundred and fifty.

MATT. GAYLE,
Clerk, dist. ct., U. S., mid. dist. of Ala.

Allowed by JOHN GAYLE,
Judge of said court.

United States of America, to James W. Tuthill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the middle district of Alabama, wherein Alanson Saltmarsh is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Gayle, judge of said court, this thirtieth

day of April, in the year of our Lord one thousand eight hundred and fifty.

JOHN GAYLE,
Judge U. S. dist. courts for the State of Alabama.

On this 11th day of May, in the year of our Lord one thousand eight hundred and fifty, personally appeared Phillips H. S. Gayle before me, the subscriber, and makes oath that he delivered a true copy of the within citation to one of the said James W. Tuthill's attorneys of record, B. J. Whatley, esq., on the eleventh day of May, A. D. 1850.

MATT. GAYLE,
Clerk, dist. ct., U. S., for mid. dist. of Ala.

We hereby acknowledge service of the within notice, not intending to waive any objection as to the time of its being filed or served, or to its form, or any objection of any kind whatever.

PRYOR & WHATLEY,
May 11, 1850. *Attys. for deft in error.*